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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA,) Case No. 23-CR-00301 WHA
16 Plaintiff,)
17 v.) UNITED STATES' SENTENCING
18 DAVID ALLEN CARRIER,) MEMORANDUM
19 Defendant.)
20 _____)
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INTRODUCTION

The United States respectfully submits this sentencing memorandum regarding defendant David Allen Carrier, who, after pleading guilty pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, is before the Court for sentencing for two violations of 18 U.S.C. § 115(a)(1)(B) – Threats Against a Federal Official. For the reasons set forth below, the United States joins Mr. Carrier in requesting that the Court impose the following sentence: (1) four years of probation, with special conditions as set out in the Plea Agreement Appendix and by the United States Probation Office in the Presentence Investigation Report (“PSR”); and (2) a special assessment of \$200.00.

PROCEDURAL BACKGROUND

On September 12, 2023, the Grand Jury for the Northern District of California indicted Mr. Carrier, charging him with two violations of 18 U.S.C. § 115(a)(1)(B) – Threats Against a Federal Official.

On October 7, 2023, Mr. Carrier was arrested by the Concord Police Department. He came into federal custody on October 10, 2023.

Mr. Carrier pleaded guilty to both counts pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure on December 19, 2023.

Sentencing is set for March 26, 2024, at 2:00 p.m. The United States' Sentencing Memorandum is therefore filed in compliance with Local Rule 32-5(b).

FACTUAL BACKGROUND

I. Count One: Mr. Carrier Left a Voicemail Message Threatening United States Congresswoman Nancy Pelosi in January 2021

In January 2021, San Francisco Congresswoman Nancy Pelosi was Speaker of the United States House of Representatives. On Thursday, January 21, 2021, Mr. Carrier left a message on Speaker Pelosi's San Francisco office voicemail. The total length of the recording is 58 seconds, including the systems announcements. The tone of the message – which starts calmly but quickly escalates to angry and yelling – is not fully captured by the following informal transcription:

1 Yeah, this is Nancy Pelosi's Office? Bitch, you better resign, you piece of
 2 fucking shit, 'cause we got a bullet and a rope with your fucking name on
 3 it. We're gonna fucking get you bitch. You're gonna need to work in a
 4 fucking slave factory or you're gonna fucking get out of our office. We
 5 don't care what the fuck you keep trying to ram down our throats, you old
 6 fucking whore. You nasty, diseased-infested bitch. I hope you have to
 7 watch your fucking grandkids fucking suffer. Go to hell you cunt.

8 The message was initially heard by an intern, who perceived it to be a threat and forwarded the
 9 message to her bosses. They also perceived the message to be a threat and subsequently forwarded the
 10 voicemail to law enforcement for investigation.

11 Mr. Carrier has admitted that when he made his threat to assault Congresswoman Pelosi, he had
 12 the intent to interfere with her while she was engaged in the performance of her official duties as a
 13 Member of Congress. As a Member of Congress, Nancy Pelosi was a United States official.

14 **II. Count Two: Mr. Carrier Left a Voicemail Message Threatening Secretary of the United
 15 States Department of Homeland Security Alejandro Mayorkas in June 2022**

16 Seventeen months later, on June 30, 2022, at 12:09 p.m., Mr. Carrier called the United States
 17 Department of Homeland Security ("DHS") Office of Inspector General's ("OIG") hotline and asked the
 18 operator if it was the line directly to Secretary Alejandro Mayorkas' office. The operator said it was the
 19 DHS OIG Hotline, and Mr. Carrier said to relay a message to Secretary Mayorkas: "If he does not close
 20 the border someone is going to be shot. And it will be illegal immigrants." Attempts by the operator to
 21 get Mr. Carrier's name at that time were unsuccessful. According to the operator, Mr. Carrier said,
 22 "Don't worry about who I am, just relay the message."

23 Later that same day, at about 1:08 p.m., Mr. Carrier left a voicemail message on the United
 24 States Department of Homeland Security's general hotline. In that voicemail, Mr. Carrier stated:

25 Tell that fuck Mayorkas to close the border before we citizens start killing
 26 those fucking illegal immigrants or we come looking for him and feed him
 27 to the dogs.

28 The voicemail message was perceived to be a threat and forwarded to law enforcement for investigation.

29 Mr. Carrier has admitted that when he made his threat to assault Secretary Mayorkas, he had the
 30 intent to interfere with the Secretary while the Secretary was engaged in the performance of his official
 31 duties as the Secretary of the Department of Homeland Security. As the Secretary of the Department of
 32 Homeland Security, Alejandro Mayorkas was the head of a United States executive department, and thus

1 a United States official.

2 **III. Similar Conduct by Mr. Carrier**

3 As the PSR outlines, Mr. Carrier has occasionally over the past few years called public officials
 4 around the country and either made strongly worded political statements to the operators or left similar
 5 voicemails. PSR ¶¶ 42, 46, 47. He also had disruptive outbursts at the credit union, PSR ¶ 43, at the
 6 supermarket, PSR ¶ 44, and with the local Social Security Administration office, PSR ¶ 45. These
 7 incidents are generally in keeping with the nature of the two charged threats, although they do not
 8 themselves amount to federal crimes. They also highlight the need for Mr. Carrier to enter treatment, as
 9 described below.

10

11 **ARGUMENT**

12 As explained below, the United States joins Mr. Carrier in requesting that the Court impose the
 13 following sentence: (1) four years of probation, with special conditions as set out in the Plea Agreement
 14 Appendix and by the United States Probation Office in the Presentence Investigation Report (“PSR”);
 15 and (2) a special assessment of \$200.00.

16 **I. The Sentencing Guidelines Calculation and Proposed Sentence**

17 The United States agrees with the criminal history calculations in the PSR, which result in a
 18 Criminal History Category of I. PSR ¶¶ 48-57.

19 The United States and Mr. Carrier agreed to a Total Offense Level calculation of 15 in the Plea
 20 Agreement (taking into account Mr. Carrier’s acceptance of responsibility). Dkt. 25 ¶ 7.

21 The Probation Office, in the PSR, calculated a slightly different Total Offense Level because it
 22 engaged in the grouping exercise laid out in Section 3D1.4 of the Sentencing Guidelines. PSR ¶¶ 20-41.
 23 The grouping exercise adds two points to the offense level calculations in the PSR, resulting in a Total
 24 Offense Level of 17 (taking into account Mr. Carrier’s acceptance of responsibility). PSR ¶¶ 20-41. The
 25 United States acknowledges that the Probation Office’s grouping exercise appears to be correct, as the
 26 two counts are against separate victims separated by a period of 17 months, and thus should not be
 27 grouped together. U.S.S.G. §§ 3D1.1 to 3D1.4.

28 As calculated by the United States and Mr. Carrier in the Plea Agreement, the Guidelines

1 imprisonment range for an offense level of 15 and a criminal history category of I is 18 to 24 months.
 2 U.S.S.G. Sentencing Table. With the adjustment as calculated by the Probation Office, the Guidelines
 3 imprisonment range for an offense level of 17 and a criminal history category of I is 24 to 30 months.
 4 PSR ¶ 78; U.S.S.G. Sentencing Table.

5 The Probation Office recommends a sentence of six months to be followed by three years of
 6 supervised release.

7 The United States and Mr. Carrier recommend a sentence of four years of probation.

8 **II. The Proposed Sentence is Just and Meet**

9 The United States avers that a sentence of four years of probation is appropriate and just because
 10 it takes into account the various considerations set out in Section 3553(a) of Title 18 of the United States
 11 Code.

12 **A. Supervision by an Empowered Probation Officer is the Best Way to Protect the
 13 Public by Preventing Mr. Carrier from Committing New Offenses**

14 Of the various important concerns and considerations enumerated in Section 3553(a), in this
 15 case, the United States is most focused on “protect[ing] the public from further crimes of the
 16 defendant...” 18 U.S.C. § 3553(a)(2)(C). Thus, the primary concern of the United States is stopping
 17 Mr. Carrier from continuing to threaten public officials in the future. Threatening public officials has a
 18 corrosive effect on the country’s democracy, in that it deters individuals from pursuing public office and
 19 it makes for a difficult and hostile working environment for public officials and their staff, who have to
 20 deal with animated statements that may or may not amount to criminal threats on a regular basis. Mr.
 21 Carrier’s threats in this case are reprehensible and deserving of punishment.

22 At the same time, the United States is conscious of the right of citizens in our country’s
 23 democracy to express their approval or disapproval to elected officials. Reaching out to elected officials
 24 is in the heartland of protected speech under the First Amendment to the United States Constitution.
 25 Nonetheless, the Supreme Court has made clear that, “True threats of violence are outside the bounds of
 26 First Amendment protection and punishable as crimes.” *Counterman v. Colorado*, 600 U.S. 66, 143 S.
 27 Ct. 2106 (June 27, 2023). Thus, even if a speaker also wishes to communicate some other idea or
 28 address a matter of public concern – speech “entitled to special protection,” *Snyder v. Phelps*, 562 U.S.

1 443, 452 (2011) (quotation marks omitted) – any attendant threats of violence remain proscribable. *See*
 2 *McCalden v. Cal. Library Ass'n*, 955 F.2d 1214, 1222 (9th Cir. 1990) (“That appellees were engaging in
 3 protected expressive activities at the same time and to the same end as the alleged threats of violence
 4 does not immunize appellees from liability for the alleged threats.... Nor does the fact that appellees
 5 were politically motivated immunize them from liability if they in fact engaged in threats of violence.”);
 6 *United States v. Kelner*, 534 F.2d 1020, 1027 (2d Cir. 1976) (“Even where the threat is made in the
 7 midst of what may be other protected political expression, . . . the threat itself may affront such
 8 important social interests that it is punishable”); *see also United States v. Waggy*, 936 F.3d 1014,
 9 1019 (9th Cir. 2019) (“That Defendant included some criticism of the government does not necessarily
 10 imbue his conduct with First Amendment protection.”).

11 As laid out in the PSR, over the past few years, Mr. Carrier has reached out to public officials
 12 around the country to express his strongly held political positions, often in anger, and often using
 13 language that calmer minds might conclude is counterproductive. The United States reviewed these
 14 various situations and determined that in most instances, Mr. Carrier did not commit a federal crime,
 15 even though his choice of language and the venomous tone with which he expressed his opinions were
 16 repugnant. The United States did, however, charge the two instances where it was clear that Mr.
 17 Carrier’s language crossed the line from odious to criminal, and those are represented in this criminal
 18 case.

19 Presented with a situation in which it must balance respecting Mr. Carrier’s First Amendment
 20 rights and sanctioning Mr. Carrier’s criminal threats that are not protected by the First Amendment, the
 21 United States has turned to the causes of Mr. Carrier’s behavior for guidance. In the view of the United
 22 States, Mr. Carrier’s outbursts in this case are driven by some combination of mental health issues,
 23 substance abuse, and economic and social isolation. All of these causes are best addressed by an
 24 attentive probation officer empowered to force Mr. Carrier to attend mental health counseling, go to
 25 substance abuse treatment, obtain employment, and widen his social circle. *See* 18 U.S.C. §
 26 3553(a)(2)(D) (stating that a criminal sentence should “provide the defendant with needed educational
 27 or vocational training, medical care, or other correctional treatment in the most effective manner”).
 28 Thus, no matter what sentence the Court ultimately decides to impose, Mr. Carrier’s sentence should

1 include conditions of probation or supervised release directly targeting the causes of Mr. Carrier's
 2 criminal behavior. Mr. Carrier will learn the self-control to stop his behavior only by directly addressing
 3 its causes. In the view of the United States, the answer is close supervision by the Probation Office.

4 **B. In the Circumstances of this Case, Incarceration is Not Necessary and Will be
 5 Counterproductive**

6 As the Court is well aware, another factor set out in Section 3553(a) is the need for the sentence
 7 imposed to "reflect the seriousness of the offense, to promote respect for the law, and to provide just
 8 punishment for the offense...." 18 U.S.C. § 3553(a)(2)(A). Arguably, as the Probation Office
 9 concluded, a term of imprisonment would accomplish those goals, and the United States routinely
 10 argues for incarceration in other cases based precisely on that provision. In this case, however, it is the
 11 judgment of the United States that incarceration is not necessary and would be counterproductive, as
 12 explained below.

13 Foremost, as noted above, the United States is focused on preventing future crimes by Mr.
 14 Carrier through the work of an active and empowered probation officer. The maximum amount of time
 15 allowable by statute for supervised release under the charged statute is three years. Accordingly, the
 16 United States recommends four years of probation, lengthening his supervision by an entire year over
 17 what is possible under supervised release. That gives the Probation Office an entire additional year of
 18 supervision of Mr. Carrier, during which time he will be forced to participate in mental health and
 19 substance abuse counseling. Mr. Carrier's mental health and substance abuse are two core causes of his
 20 criminal behavior. A longer period of supervision in the judgment of the United States is a significant
 21 benefit over a period of incarceration followed by a shorter term of supervised release. Thus, the
 22 Probation Office's proposal of six months incarceration to be followed by three years of supervised
 23 release would have Mr. Carrier outside of supervision quicker than what the United States proposes to
 24 the Court.

25 Second, probation acts as a greater inducement for compliance compared to supervised release.
 26 As the Court knows, sentences for violations of supervised release for a Class C Felony is limited to two
 27 years of incarceration, and the guidelines for such violations are often much shorter. *See* 18 U.S.C. §
 28 3583(e)(3). In contrast, punishment for a violation of probation is simply resentencing, and thus a

1 punishment of up to 10 years could be meted out to Mr. Carrier. *See* 18 U.S.C. § 3565. Mr. Carrier's
 2 guideline sentencing range is at 24 to 30 months. If Mr. Carrier were to violate the terms of his
 3 probation, as the United States recommends, the Court could then impose a lengthier sentence on Mr.
 4 Carrier than it could were he to be on supervised release. Mr. Carrier has been advised of this
 5 possibility by his attorney, and the greater potential penalty for violating the terms of his probation (as
 6 compared to supervised release) will therefore act as a greater deterrent. And deterring Mr. Carrier from
 7 committing future similar crimes is a primary goal from the perspective of the United States.

8 Third, the United States asserts that two of the causes of Mr. Carrier's threats were economic and
 9 social isolation. Since Mr. Carrier has been charged in this case, the Pretrial Services Office has
 10 undertaken many efforts get Mr. Carrier working and transplant Mr. Carrier into a broader social
 11 environment. To the best of the United States' understanding, Mr. Carrier spent much of the last few
 12 years living at his significant other's house, unemployed, with occasional spot work as a barber. Since
 13 charging, Mr. Carrier has obtained employment at Urban Alchemy cleaning and monitoring the streets
 14 of the Tenderloin and, it appears, more recently as a maintenance technician with Preferred Solutions
 15 Corporation. He has also – required by virtue of a restraining order – moved out of his significant
 16 other's house in East Bay and has obtained housing on his own in San Francisco, which he is paying for
 17 through his employment. These are positive changes that may well reorient Mr. Carrier away from his
 18 prior situation, both in terms of employment and living arrangements, that led to his criminal behavior.
 19 As a result, sending Mr. Carrier to prison will simply disrupt this progress and leave him more likely to
 20 recidivate on his release.

21 Finally, Mr. Carrier did not contest his guilt and quickly pleaded guilty; he therefore deserves
 22 credit for the speedy resolution of this matter. Mr. Carrier appears to acknowledge his lapse of
 23 judgment in making threats to the victims in this case, and his willingness to avoid lengthy litigation
 24 should not be overlooked. Thus, in the judgment of the United States, a more severe punishment in the
 25 form of a period of incarceration is not warranted.

26 In the end, it is the position of the United States that the proposed sentence of four years of
 27 probation is sufficient, but not greater than necessary, to comply with the purposes of sentencing. *See*
 28 18 U.S.C. § 3553(a).

CONCLUSION

For the reasons set forth above, the United States joins Mr. Carrier in respectfully requesting that the Court sentence Mr. Carrier to: (1) four years of probation, with special conditions as set out in the Plea Agreement Appendix and by the United States Probation Office in the PSR; and (2) a special assessment of \$200.00.

DATED: March 19, 2024

Respectfully submitted,

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/s/ Nicholas Walsh
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